

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)	
)	
KM Television of El Dorado, LLC)	
)	CSR-6268-M
v.)	CSR-6272-M
)	
Classic Cable of Louisiana, LLC)	
Request for Stay)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 8, 2004

Released: July 12, 2004

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Before us is a Request for Partial Stay of Order (“Request”) filed by Classic Cable of Louisiana, LLC and Friendship Cable of Arkansas (“Classic”), pursuant to Sections 1.41 and 1.102 of the Commission’s rules,¹ of the Media Bureau’s *Order* (“*Order*”) granting must carry status to KEJB(TV), El Dorado, Arkansas (“KEJB”) on Classic’s cable systems serving various communities in Louisiana and Arkansas.² The *Order* requires Classic to commence carriage of KEJB no later than 60 days from the date of release of the *Order*, based on deficiencies in Classic’s methodology for measuring the station’s signal strength. KEJB filed an opposition, to which Classic replied.³

¹ 47 C.F.R. §§ 1.41, 1.102.

² The *Order* directed Classic to commence carriage of KEJB within 60 days of its release in the following communities: CSR-6268-M - Bernice (LA0287), Calion (AR0295, AR0296), Dubach (LA0288), Hamburg (AR0082), Junction City (AR0294), Junction City (LA0293), Lake Bruin (LA0256), Lincoln (LA0289), Norphlet (AR0243), Smackover (AR0242), Spokane (LA0327), Tensas (LA0306), and Union (LA0290); CSR-6272-M – Fountain Hill (AR0563).

³ Classic also filed a Motion to Strike KEJB’s Opposition to Classic’s Request for Partial Stay of Order, arguing that the opposition was untimely filed, pursuant to Section 1.45(d) of the Commission’s rules. While we agree with Classic that the opposition was filed without benefit of motion for a late filed pleading and outside of the filing date specified in Section 1.45(d), we shall accept the pleading in order to ensure a complete record in this matter.

2. In support of its Request, Classic provides by reference,⁴ new signal strength studies intended to demonstrate that the station does not provide a good quality signal to Classic's headends serving the communities which are subject to the instant request.⁵ However, these studies are once again deficient in terms of the methodology used. Classic's test results do not demonstrate appropriate orientation of the receive antenna for testing signal strength. Antenna orientation is a critical factor in analyzing a station's signal. The test results for the Lake St. John and St. Joseph headends state that "[t]he antenna was directed toward the Eldorado [sic] area to receive the best KEJB signal."⁶ The tests also state that the antenna was "aimed at KEJB transmitter."⁷ However, the station's transmitter is located near Huttig, Arkansas, more than 25 miles from El Dorado. The Commission looks to "whether the antenna was properly oriented" in regard to signal testing.⁸ These contradictory statements do not demonstrate a precision in antenna orientation upon which to base a signal strength measurement. However, it appears that it is possible, if not probable, that KEJB is not currently providing a good quality signal to these headends. The Lake St. John and St. Joseph headends are 104 and 95 miles from the station's transmitter, respectively, and well outside of the station's Grade B contour.⁹ We recognize that it is unlikely that the station will provide a good quality signal without the use of additional specialized equipment, which has not yet been provided. In regard to the Smackover headend, the test results state that the "antenna was rotated and peaked to receive [the] best possible KEJB signal."¹⁰ This language indicates that the measurement was taken properly and the antenna correctly oriented to KEJB's transmitter. However, the Smackover test was conducted with an antenna mounted at 25 feet on a 160 foot tower. It is therefore not clear whether the signal strength tests were taken consistent with the height of antennas used to receive other full power television stations.¹¹

3. Classic contends that without the requested stay, Classic and its subscribers will be irreparably harmed by severe viewer disruption and confusion caused by the airing of KEJB's signal, which will displace other programming and will transmit as "complete snow."¹² Classic also argues that the station will not be harmed by the requested stay, since the station cannot currently deliver a good quality, or even viewable, signal to the system's headends subject to this request.¹³ Classic maintains that it is under no obligation to carry KEJB on the subject cable systems until the station delivers a signal that meets the statutory requirements.¹⁴

⁴ The signal strength studies are included as exhibits in Classic's Partial Petition for Reconsideration, filed concurrent with the instant matter.

⁵ Classic requests that the Bureau stay its order in regard to the communities of Smackover, Norphlet, Calion (served by the Smackover headend), Lake Bruin (served by the St. Joseph headend), and Tensas and Spokane (served by the Lake St John headend).

⁶ Petition for Partial Reconsideration, Exhibit A.

⁷ *Id.*

⁸ See *Complaint of Channel 5 Public Broadcasting*, 8 FCC Rcd 4953 (1993).

⁹ Reply at 5, Exhibit A.

¹⁰ Petition for Partial Reconsideration, Exhibit A.

¹¹ See, e.g., *Prime Time Christian Broadcasting, Inc.*, 15 FCC Rcd 7872 (2000).

¹² Request at 3.

¹³ *Id.*

¹⁴ *Id.*

4. In opposition, KEJB argues that regardless of the new test results, the station has committed to providing a good quality signal to the systems' headends.¹⁵ In addition, KEJB contends that there is no possibility of irreparable harm to the systems and their subscribers. KEJB argues that "in the unlikely event" that the station is not providing a good quality signal, its commitment to use additional equipment or alternate means would minimize any interruption of carriage to a "brief and temporary" period.¹⁶

5. The delivery of a good quality signal of -45 dBm or better to a cable system's headend is one of the basic requirements for mandatory carriage.¹⁷ The Commission granted mandatory carriage in this matter based on the non-compliant signal strength test results Classic submitted in connection with the underlying order. The current tests submitted by Classic still demonstrate deficiencies in acceptable engineering practices. However, KEJB's commitment to provide a good quality signal at some uncertain future date does not preclude the disruption caused to the systems and subscribers in displacing other programming services and transmitting a poor quality, perhaps unviewable, signal.

6. While there is a presumption that a television station has a right of carriage on a cable system located in the same market, the cable operator is obligated to carry the station only when the station provides a good quality signal to the cable system's headend. In this proceeding, it is still not clear whether KEJB is providing the requisite signal. We are hesitant to order carriage in the instant situation without further clarification. It appears from the record before us that the broadcaster and cable operator have not fully cooperated in achieving accurate test results. Accordingly, we will afford Classic thirty days in which to supply the Commission with tests results indicating proper antenna orientation to optimize signal strength readings for the Lake St. John and St. Joseph headends, and further clarify the testing procedures for the Smackover headend. We are reluctant to order carriage of a signal which may be substandard with its attendant disruption to subscribers. Accordingly, we request that Classic remedy its signal strength tests and submit its results to the Commission within thirty days of the release date of this order. We also remind the parties that the Commission expects full cooperation between cable television operators and television stations in resolving must carry disputes.¹⁸

7. Based on the foregoing, we grant Classic's Request for Stay until the Bureau has had an opportunity to review Classic's revised signal strength studies. Section 1.102(b)(2) of the Commission's rules provides that if a petition for reconsideration of a non-hearing action is filed, the designated authority, may in its discretion stay the effect of its action pending disposition of the petition for reconsideration.¹⁹ Our action herein should not be construed as an indication of the eventual outcome of Classic's Partial Petition for Reconsideration.

II. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, that the Partial Request for Stay of Order filed by

¹⁵ Opposition at 3.

¹⁶ *Id.* at 4.

¹⁷ See 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

¹⁸ See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2991 (1993).

¹⁹ 47 C.F.R. § 1.102(b)(2).

Classic Cable of Louisiana, LLC and Friendship Cable of Arkansas **IS GRANTED** until the Bureau acts upon Classic's Partial Petition for Reconsideration.

9. **IT IS FURTHER ORDERED**, that Classic shall submit engineering studies consistent with the opinion above within thirty days of the release date of this order.

10. This action is taken pursuant to authority delegated by Sections 0.283, 1.43 and 1.102(b)(2) of the Commission's rules.²⁰

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

²⁰ 47 C.F.R. §§ 0.283, 1.43 and 1.102(b)(2).